109-194

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 93.

GEORGE D. CRAGIN, APPELLANT,

vs.

WILLIAM S. LOVELL, EXECUTOR OF ELIZA A. QUITMAN, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED OCTOBER 11, 1880.

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a UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Lousiana.

GEORGE D. CRAGIN
vs.
ELIZA A. QUITMAN. } No. 8774.

Rouse and Grant, for complainant appellant; Joseph P. Horner and Wm. S. Benedict, for defendant appellee.

TRANSCRIPT OF RECORD OF APPEAL.

Returnable to the Supreme Court of the U. S., at the city of Washington, D. C., on the second Monday of October, A. D. 1880.

1 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.
In equity.

GEORGE D. CRAGIN
vs.
ELIZA A. QUITMAN. } No. 8774.

Bill filed April 30, 1879.

To the honorable the judges of the circuit court of the United States for the fifth circuit and district of Louisiana:

George D. Cragin, of Rye, Westchester County, State of New York, and a citizen of the State of New York, brings this his bill against Eliza A. Quitman, a femme sole of Ulster County, State of New York, and a citizen of the State of New York, and thereupon your orator complains and says:

That on the day of March, 1879, Eliza A. Quitman, the defendant herein, by her attorneys, Hornor and Benedict, filed a petition on the law side of this court, No. 8691, of the docket of this court, in which
2 she alleged, among other things, that she was a citizen of New York, and that complainant herein was a citizen of the State of Louisiana, and residing in the parish of Terre Bonne, in said State, and that your orator was indebted unto said Eliza A. Quitman in the sum of twelve thousand dollars, with interest and costs, subject to the following credit for this, to wit:

"That on the 31st of January, 1870, by act, before Andrew Hero, jr., notary, your petitioner sold a certain plantation known as the Live Oak or Quitman Place, in the parish of Terre Bonne, to one Orlando P. Fisk, for the price and sum of $22,500.00, of which $4,500 was paid in cash and for the balance nine notes of said O. P. Fisk were given, each dated 31st January, 1870, each for the sum of two thousand dollars, and payable re-*respectively* at one, two, three, four, five, six, seven, eight, and nine years respectively, bearing interest at the rate of seven per cent. per annum

until maturity, and thereafter at the rate of eight per cent. per annum until final payment, which said act of sale and mortgage was duly recorded on the 12th day of February, 1870, in the proper office of the parish of Terre Bonne."

3 And the said Eliza A. Quitman further alleged that three of said notes had been paid by your orator.

And she further alleged in her said petition that the mortgage retained by her as vendor to secure the payment of said remaining six notes had been duly foreclosed, and that she had realized from the sale of said Quitman or Live Oak plantation on the 1st day of May, 1874, the sum of $10,447.05, which was a credit on said note of that date.

And the said Eliza A. Quitman further alleged and set forth in her said petition that your orator was the real owner of said plantation, and that he had been decreed so to be by this hon. court in certain proceedings wherein your orator was complainant and Orlando P. Fisk defendant.

And the said Eliza A. Quitman in her said petition further prayed that your orator be cited, and that she have judgment against your orator in the sum of twelve thousand dollars, with seven per cent. per annum interest from the 31st day of January, 1870, to their respective maturities of said notes, and at 8% per annum thereafter until paid, subject to a credit of $10,447.05, of date the 6th of May, 1874, and for costs and general relief.

4 And your orator further complains and says that citation was issued in said proceedings on the 3d day of March, 1879, and served on your orator personally on the 3d day of April, 1879; and that thereafter, to wit, on the 23d day of April, 1879, a judgment by default was rendered against your orator, and that thereafter, to wit, on the 26th day of April, 1879, the said Eliza A. Quitman in said cause caused a jury to be called and sworn, and said matter was submitted to said jury for confirmation of said default, and said jury returned a verdict therein in the following words and figures, to wit: "Verdict for plaintiff and against the defendant for $12,000, with interest as prayed for in petition," April 26, 1879.

And thereupon, upon the same day, a judgment was rendered and signed by this hon. court in said cause against your orator in the words and figures following, to wit:

"By reason of the verdict of the jury herein, and in accordance therewith, it is ordered, adjudged, and decreed that the plaintiff, Eliza A. Quitman, unmarried and of age, do have and recover of the defendant,

5 George D. Cragin, the sum of $12,000, with seven per cent. per annum interest on $2,000 from January 31, 1870, to 3d February, 1873; on $2,000, from January 31st, 1870, to 3d February, 1875; on $2,000, from 31st January, 1870, to 3d February, 1876; on $2,000, from 31st January, 1870, to 3d February, 1877; on $2,000, from 31st January, 1870, to 3d February, 1878, and on $2,000 from 31st January, 1870, to 3d February, 1879, and interest at the rate of eight per cent. per annum on said respective sums of $2,000, from said respective dates of maturity of said notes, to wit, from 3d day of February, 1873, 1875, 1876, 1877, 1878, and 1879, until paid and costs of suit, subject to a credit of $10,447.05 paid on 6th May, 1874."

And your orator further complains and says that there is no appeal from

said judgment, the amount being under five thousand dollars, and the said judgment is now final, by reason of the expiration of the term of this hon. court at which it was rendered.

And your orator further complains and says that the circuit court of the United States for the fifth circuit, district of Louisiana, had no jurisdiction whatever to hear and determine said cause, as both the plaintiff therein,

6 Eliza A. Quitman, and the defendant, George D. Cragin (your orator), were at the time of the institution of said suit, are now, and have been for many years past, citizens of the State of New York.

And your orator further complains and says that it was falsely and fraudulently alleged in said petition of Eliza A. Quitman that your orator was and is a citizen of the State of Louisiana, and that it was well known to the plaintiff in said suit at the time said suit was instituted and said proceedings had and said judgment aforesaid rendered your orator was a citizen of the State of New York, and that both plaintiff and defendant in said suit were citizens of the same State, to wit, the State of New York.

And your orator complains and says that notwithstanding it was well known to the plaintiff in said suit that she and the defendant (your orator) were citizens of the same State, and notwithstanding your orator made no appearance therein, nor assented in any manner to the jurisdiction of the court, the said Eliza A. Quitman, plaintiff, proceeded illegally and unjustly to obtain a judgment by default, and then to have the same confirmed as aforesaid.

7 And your orator further complains and says that said proceedings in said suit and the judgment obtained therein are utterly null, void, and of no effect whatever, and the same are coram non judice, the court having no jurisdiction over your orator by reason of his being a citizen of the State of New York aforesaid.

And your orator further complains and says that he fears and has reasons to fear that the said plaintiff, Eliza A. Quitman, and her attorneys, Hornor & Benedict, and the marshal, will proceed to execute said judgment, and cause to be seized and sold the property of your orator which is and may be within the jurisdiction of this hon. court, and your orator will be unjustly and illegally deprived of his property, to his great wrong and irreparable injury.

All which acts, doings, and pretenses are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator in the premises.

In consideration whereof, and forasmuch as your orator can only have adequate relief in the premises in this hon. court, where matters of this nature are properly cognizable and relievable:

8 And may it please your honors to grant unto your orator the writ of injunction issuing out of and under the seal of this hon. court according to the forms of the statute in such case made and provided, directed to the said Eliza A. Quitman, defendant, her attorneys, Hornor & Benedict, and the U. S. marshal, commanding, enjoining, and restraining the said defendant, her attorneys, and the U. S. marshal of this district from all further proceeding in the cause entitled Eliza A. Quitman vs. George D. Cragin, No. 8691 of the docket of this hon. court, and from all proceeding to execute the judgment therein rendered, and from all execution, seizure, and enforcement of said judgment or attempt

to enforce the collection of said money under said judgment, and that said judgment be declared null and void, and that an injunction pendente lite after due notice may be granted herein.

And may it please your honors to grant unto your orator a writ of subpœna of the United States of America, issuing out of and under the seal of this hon. court, directed to the said Eliza A. Quitman, defendant,
9 through her attornies, Messrs. Hornor & Benedict, she being a non resident and absent from the State, commanding her on a day certain therein to be named, and under a certain penalty to be and appear in this hon. court, then and there to answer all and singular the premises, and to stand to, perform, and abide such further order, direction, and decree as may be made against her.

And your orator as in duty bound, &c.

(Signed) SINGLETON & BROWNE,
Solicitors for Complainant.

UNITED STATES OF AMERICA,
District of Louisiana:

George D. Cragin, being duly sworn, deposeth and saith that he is the complainant in the foregoing bill named, and has read the same and knows the contents thereof.

That the said bill is true of his own knowledge, except as to those matters which are therein stated to be on his information and belief, and as to those he believes it to be true.

(Signed) G. D. CRAGIN.

Sworn to and subscribed before me this 30th April, 1879.

(Signed) F. B. VINOT,
U. S. Comm'r.

10 U. S. c't c't. In equity.

GEORGE D. CRAGIN
vs.
ELIZA A. QUITMAN.

George D. Cragin, being duly sworn, says: I am sixty-two years of age; I am now, and have been since the year A. D. 1837, a resident and a citizen of the State of New York; I reside now and have resided at Rye, Westchester County, State of New York, for the past eighteen years; I am only temporarily in the State of Louisiana, and expect to return to my home in New York in a few days; I have always voted in the State of New York.

(Signed) G. D. CRAGIN.

Sworn to and subscribed before me this 30th April, 1879.

(Signed) F. B. VINOT,
U. S. Comm'r.

Demurrer to bill.—Filed June 2d, 1879.

United States circuit court.

GEORGE D. CRAGIN
vs.
ELIZA A. QUITMAN. } No. 8774.

11 The demurrer of Eliza A. Quitman, defendant, to the bill of complaint of George D. Cragin, complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill contained to be true in such manner or form as the same are therein and thereby set forth and alleged, does demur to the said bill, and for cause of demurrer show that the said complainant has not by his said bill made such a case as entitles him in a court of equity to any discovery from this defendant, or to any relief against her as to the matters contained in the said bill or any of such matters, and that any discovery which can be made by this defendant touching the matters complained of in the said bill or any of them cannot be of any avail to the said complainant for any of the purposes for which a discovery is sought against this defendant by the said bill, nor entitles the said complainant to any relief in this court touching any of the matters therein complained of.

Wherefore, and for divers other good causes of demurrer appear-
12 ing in the said bill, this defendant does demur thereto, and she prays the judgment of this honorable court whether she shall be compelled to make any other or further answer to the said bill, and she humbly prays to be hence dismissed with her reasonable costs in this behalf sustained.

(Signed) HORNOR & BENEDICT, *Att'ys.*

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

6, 11, '79.

(Signed) JOSEPH P. HORNOR.

Joseph P. Hornor, being duly sworn, says that he is one of the solicitors in the above case for the defendant, Eliza A. Quitman, and that said defendant resides in New York State, and is not now within the jurisdiction of this honorable court, and that the above demurrer is not interposed for delay.

(Signed) JOSEPH P. HORNOR.

Subscribed and sworn before me June 11th, 1879.

(Signed) F. A. WOOLFLEY,
Commissioner U. S. Circuit Court.

13 *Supplemental and amended bill.—Filed June 23d, 1879.*

U. S. circuit court, fifth circuit, district of Louisiana.

GEO. D. CRAGIN
vs.
ELIZA A. QUITMAN. } No. 8774. In equity.

To the hon. the judges of the circuit court of the United States for the fifth circuit and district of Louisiana. In chancery.

The supplemental and amended bill of complaint of George D. Cragin, of the State of New York, leave being first had and obtained of this hon. court to file the same against Eliza A. Quitman, of the State of New York, complaining, shews to your honors:

That all and singular the allegations, averments, and statements made by your orator in his original bill filed herein are true and correct, and he now reiterates and reaffirms the same in each and every particular.

And your orator further shows by way of supplement that he has a good and valid and sufficient defence at law against the demand and claim
14 made against him in the suit entitled Eliza A. Quitman vs. George D. Cragin, No. , of the docket of the circuit court of the United States in and for the fifth circuit, district of Louisiana, wherein a judgment was prayed for in the following words and figures, to wit, in said sum of twelve thousand dollars, with seven per cent. per annum interest thereon from the 31st day of January, 1870, to their respective maturities of said notes, and at 8% per annum thereafter until paid, subject to a credit of $10,447.05 of date the 6th of May, 1874, and all costs and for general relief.

And a verdict and judgment were accordingly rendered against your orator, all of which is referred to and made part of this supplemental and amended bill. That it is not true that your orator was ever decreed to be the owner of the Live Oak plantation, as is alleged in the petition in said cause; that it is not true that your orator ever became bound legally or equitably for the payment of the notes sued on, and that it is not true that your orator owes the said Eliza A. Quitman any sum of money, as is alleged in her said petition, nor any part thereof.

15 And your orator, further complaining, shows that in obedience to the order of this hon. court he has paid the costs in the suit entitled Eliza A. Quitman vs. George D. Cragin, amounting to the sum of dollars, and that he has also filed his bond with good and solvent surety with the clerk of this honorable court, conditioned according to law, for the sum of eight thousand five hundred dollars, which is more than one-half over and above the judgment, with interest and costs rendered against your orator in the cause entitled Eliza A. Quitman vs. George D. Cragin as aforesaid.

To the end, therefore, that the said defendant may, if any she can, show cause why your orator should not have the same relief hereby and by his said original bill prayed, and as he might have had if the facts heretofore stated and charged by way of supplement had been stated in your orator' said original bill, and that your orator may have such other and further relief in the premises as the circumstances of the case may require, and to your orator shall meet, may it please your honor to grant
16 unto your orator the writ of subpœna issuing out of and under the

seal of this hon. court to be directed to the said Eliza A. Quitman, commanding her by a certain day, and under a certain penalty therein to be inserted, to be and appear in this hon. court, then and there to answer all and singular the premises and to stand to, perform, and abide such further order, direction, and decree as may be made against her.

And your orator, as in duty bound, will ever pray, &c.

(Signed) R. H. BROWNE,
Solicitor for Complainant.

(Signed) C. B. SINGLETON,
Of Counsel.

George D. Cragin, being duly sworn, deposeth and saith that he is the complainant in the foregoing supplemental and amended bill, and has read the same and knows the contents thereof; that the said supplemental and amended bill, as also the original bill, is true of his own knowledge.

(Signed) G. D. CRAGIN.

Sworn to before me, at New York City, county and State, this
17 2nd day of June, A. D. 1879, as witness my hand and official seal.

[SEAL.] (Signed) CHARLES EDGAR MILLS,
Commissioner for Louisiana in N. Y.,
and a Notary Public for New York Co.,
in N. Y., 115 Broadway, N. Y.

Let the within supplemental and amended bill of complaint be filed, and upon filing the annexed bond with Samuel Cragin, as surety, in the sum of $8,500.00, let the injunction issue in accordance with the order of May 22, 1879.

June 2d, 1879.

(Signed) EDWARD C. BILLINGS, *Judge.*

Demurrer to bill.—Filed August 4, 1879.

In the United States circuit court, district of Louisiana.

GEORGE D. CRAGIN
vs.
ELIZA A. QUITMAN. } No. 8774. In chancery.

The demurrer of Eliza A. Quitman, defendant, to the bill of complaint of George D. Cragin, the above-named plaintiff.

18 This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in said plaintiff's bill of complaint contained to be true in such manner and form as the same *as* therein set forth and alleged, doth demur to the said bill, and for cause of demurrer showeth that the said complainant hath not, in and by his said bill, made or stated such a case as doth or ought to entitle him to any such discovery or relief as is thereby sought and prayed for from or against this defendant.

Wherefore, and for divers other good causes of demurrer appearing in the said bill, this defendant doth demand the judgment of this honorable

court whether he shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

(Signed) HORNOR & BENEDICT.

W. S. Benedict, being duly sworn, says he is solicitor for respondent herein, who is absent from the State; that the above and foregoing demurrer is not interposed for delay.

19 (Signed) W. S. BENEDICT.

Sworn to and subscribed before me this 4th day of August, 1879.

(Signed) F. A. WOOLFLEY,
Comm'r U. S. Circuit Court, Dist. of La.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

(Signed) W. S. BENEDICT,
Solicitor for Respondent.

Entry at rules.—Demurrer set down for argument.—Extract from chancery order-book, September rules, 1879.

MONDAY, *September* 1*st*, 1879.

GEORGE D. CRAGIN
vs.
ELIZA A. QUITMAN. } No. 8774.

The complainant comes, by Singleton & Browne, his solicitors, and sets down for argument the demurrer of the defendant herein to the complainant's bill of complaint.

Demurrer to amended and supp'l bill.—Filed November 6th, 1879.

20 United States circuit court.

GEORGE D. CRAGIN
vs.
ELIZA A. QUITMAN. } No. 8774. In chancery.

The demurrer of Eliza A. Quitman, defendant, to the amended and supplemental bill of complaint of George D. Cragin, complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill contained to be true, in such manner and form as the same are therein and thereby set forth and alleged, does demur to the said bill, and for cause of demurrer show' that the said complainant has not, by his said bill, made such a case as entitles him, in a court of equity, to any discovery from this defendant, or to any relief against her as to the matters and things contained in the said bill, or any of such matters, and that any discovery which can be made by this defendant touching the matters complained of in the said

bill, or any of them, cannot be of any avail to the said complainant for any of the purposes for which a discovery is sought against this
21 defendant by the said bill, nor entitle the said complainant to any relief in this court touching any of the matters therein complained of.

Wherefore, and for divers and good causes of demurrer appearing in the said bill, this defendant does demur thereto; and she prays the judgment of this honorable court whether she shall be compelled to make any further or other answer to the said bill, and she humbly prays to be hence dismissed with her reasonable costs in this behalf sustained.

(Signed) JOSEPH P. HORNOR &
" W. S. BENEDICT, *Solicitors.*

I hereby certify that in my opinion the above demurrer is well founded in point of law.

(Signed) JOSEPH P. HORNOR.

Joseph P. Hornor, being duly sworn, deposes and says that he is one of the solicitors for defendant herein; that defendant is absent from this State, and that the above demurrer is not interposed for delay.

(Signed) JOSEPH P. HORNOR.

Subscribed and sworn before me Nov'r 6, 1879.

(Signed) F. A. WOOLFLEY,
Commissioner U. S. Circuit Court, District of Louisiana.

22 *Hearing and submission of demurrers.—Extract from minutes, November term*, 1879.

NEW ORLEANS, *Saturday, November* 15, 1879.

Court met pursuant to adjournment. Present, Hon. E. C. Billings, district judge.

GEORGE D. CRAGIN
vs.
ELIZA A. QUITMAN. } No. 8774.

This cause came on to be heard on the demurrers to the bill and amended bill herein, and having been argued by Singleton & Browne for complainant, and Joseph P. Hornor for demurrant, the court took time to consider.

Decree sustaining demurrers and dismissing bill and amended bill.—Entered & filed January 6, 1880.

United States circuit court, district of Louisiana, November term, 1879.

GEORGE D. CRAGIN
vs.
ELIZA A. QUITMAN. } No. 8774.

23 This cause came on to be heard at this term of the court on the bill and supplemental and amended bill of the complainant, and

upon the demurrers to both, herein filed by the defendant, and was argued by the counsel of the parties respectively; and thereupon, upon consideration thereof, the court being of the opinion that the demurrers are well taken, it is therefore ordered, adjudged, and decreed that the demurrers be sustained, and that the bill and supplemental and amended bill be dismissed at the costs of the complainant.

It is further adjudged and decreed that the injunction heretofore issued herein be set aside and vacated.

January 6, 1880.

(Signed) EDWARD C. BILLINGS, *Judge.*

Hearing & submission of petition for appeal.—Extract from minutes of 14 *January,* 1880.

GEO. D. CRAGIN
vs.
ELIZA A. QUITMAN. } No. 8774.

This cause came on to be heard on the petition of the complain-
24 ant for an appeal with supersedeas, and having been argued by counsel the court took time to consider.

Order allowing appeal, &c.—Extract from minutes of 16*th January,* 1880

GEORGE D. CRAGIN
vs.
ELIZA A. QUITMAN. } No. 8774.

This cause having been heretofore submitted on the petition of the complainant for an appeal with supersedeas, and the court having considered the same and the arguments of counsel for the parties respectively, now orders that an appeal to operate as a supersedeas, returnable to the Supreme Court of the United States on the 2d Monday of October, A. D. 1880, be allowed to the complainant.

And the court further orders that Eliza A. Quitman, the plaintiff in the suit on the law side of this court, No. 8691, be allowed to make her seizure in said case, but proceed no further, and in the event the property so seized be of sufficient value to cover the judgment of said plaintiff
25 the complainant in this case shall furnish a bond with good and solvent surety in the sum of $500; but if said property so seized be not of sufficient value to cover the plaintiff's judgment with interest in said suit at law, then the said complainant shall give bond in said suit at law in an amount sufficient to cover the difference between the value of the property seized and the amount of the judgment in said suit No. 8691.

Order fixing amount bond to be given in suit at law.—Extract from minutes 19 *January,* 1880.

GEORGE D. CRAGIN
vs.
ELIZA A. QUITMAN. } No. 8774.

And now this day, in open court, comes Joseph P. Hornor, solicitor for

Eliza A. Quitman, and suggesting to the court that he has caused a writ of fieri facias to issue in the case on the law side of this court, No. 8691 of the docket thereof, and that no property has been found belonging
26 to George D. Cragin, complainant and appellant herein, moves the court to fix the amount of the bond to be given by said George D. Cragin in said suit at law at one-half over the amount of the judgment, with interest in said case.

And after hearing counsel for complainant in opposition, it was order' by the court that said motion be granted, and accordingly that under the order herein made on 16th January, 1880, George D. Cragin, appellant, do furnish in said case No. 8691 a bond with good and solvent surety in a sum exceeding by one-half the amount of the judgment with interest in said case No. 8691.

Bond for appeal.—Filed February 28, 1880.

UNITED STATES OF AMERICA:

Know all men by these presents that we, George D. Cragin, as principal, and Samuel Cragin, as surety, are held and firmly bound, jointly and severally, unto Eliza A. Quitman in the sum of nine thousand dollars, lawful money of the United States of America, to be paid to the
27 said Eliza A. Quitman, her heirs, executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated the 13th day of February, in the year of our Lord eighteen hundred and eighty.

Whereas the said George D. Cragin having heretofore, to wit, on the 16th day of January, 1880, taken an appeal to the Supreme Court of the United States from and to reverse the decree rendered on the sixth day of January, 1880, by the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, in the suit of George D. Cragin against Eliza A. Quitman, No. 8774 of the docket thereof:

Now, the condition of the above obligation is that if the above bounden George D. Cragin shall prosecute his said appeal to effect, and shall answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed) G. D. CRAGIN. [L. S.]
" SAM'L CRAGIN. [L. S.]

Signed, sealed, and delivered in the presence of—
Witness: (Signed) J. H. ROUSE.
28 Bond approved.
(Signed) EDWARD C. BILLINGS, *Judge.*

Motion and order: Bond for appeal accepted and to operate as a supersedeas, &c.—Extract from minutes of 28 *February,* 1880.

GEORGE D. CRAGIN
vs. } No. 8774.
ELIZA A. QUITMAN.

On motion of Rouse and Grant, solicitors for complainant, and it ap-

pearing to the court that complainant has given the security required by the order of January 19, 1880, entered herein, and that the same is good and sufficient, and complainant having filed a bond for supersedeas in the sum of nine thousand dollars, it is ordered that said bond be, and the same is hereby, accepted, and that it operate as a supersedeas on the appeal granted herein.

And it is further ordered that the injunction herein remain in force during the pendency of said appeal.

29 *Agreement.—Filed September 6th,* 1880.

United States circuit court, district of Louisiana.

GEORGE D. CRAGIN
vs.
ELIZA A. QUITMAN. } No. 8774.

In order to eliminate from the record matters useless for the purposes of the appeal in this cause, and to save costs, it is agreed that there may be omitted from the transcript in the case all subpœnas and marshal's returns thereon, all orders granting injunctions, all injunctions and marshal's return thereon, all entries in chancery order-book, and entries fixing and continuing rules and demurrers, and the petition for appeal.

Either party may, if it be deemed necessary, supply any of the omitted portions of the record, the cost thereof to be borne by the appellant.

N. O., 4th Sept'r, 1880.

(Signed) ROUSE & GRANT,
Sol'rs for Appellant.

(Signed) JOSEPH P. HORNOR,
Sol'r for Appellee.

30 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 29 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of George D. Cragin vs. Eliza A. Quitman, No. of the docket, so far as the same now remain of record or on file in said court, excepting such matters as are omitted in accordance with the agreement of the solicitors for both parties, on file and made a part of this transcript.

Witness my hand and the seal of said court at the city of New Orleans this 6th day of September, A. D. 1880.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, Edward C. Billings, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans, in said district, this 6th day of September, A. D. 1880.

[SEAL.] EDWARD C. BILLINGS, *Judge.*

31 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to Eliza A. Quitman, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the second Monday of October next, pursuant to a petition and order for an appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein George D. Cragin is complainant and appellant and you are defendant and appellee. to show cause, if any there be, why the decree rendered against the said George D. Cragin, as in said petition and order for an appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 28th day of February, in the year of our Lord one thousand eight hundred and eighty.

EDWARD C. BILLINGS,
Judge.

32 (Indorsed:) W. S. Benedict, United States circuit court, R. No. 8774. George D. Cragin, complainant and appellant, vs. Eliza A. Quitman, defendant and appellee. Citation.

Marshal's return.

Received Aug. 2, 1880, by the U. S. marshal, and on the same day, month, and year I served a true copy of the within citation of appeal on Eliza A. Quitman, appellee herein, by delivering the same to W. S. Benedict, esq., in person, a member of the late firm of Hornor & Benedict, attorneys of record for the aforesaid appellee, in the city of New Orleans, district of Louisiana.

E. S. CURRY,
D'y U. S. Marshal for District of Louisiana.

Personally appeared before me E. S. Curry, a deputy U. S. marshal in and for the district of Louisiana, and makes oath that he served a true copy of the within citation of appeal on the appellee within named, as set forth in his official return hereon.

E. S. CURRY,
D'y U. S. Marshal for District Louisiana.

Subscribed and sworn before me Aug't 3rd, 1880.

F. A. WOOLFLEY,
Commissioner United States Circuit Court, District of Louisiana.

(Indorsement on cover:) No. 93. George D. Cragin, appellant, vs. William S. Lovell, executor of Eliza A. Quitman, deceased. Louisiana C. C. U. S. Filed October 11, 1880.

109-194

109-194

OFFICE SUPREME COURT U. S.
FILED
OCT 23 1883
WM H. McKENNEY, Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1883.

No. 93.

GEORGE D. CRAGIN, APPELLANT,

versus

WILLIAM S. LOVELL, EXECUTOR OF ELIZA A. QUITMAN, DECEASED.

STATEMENT OF THE CASE.

The bill of complaint filed by the appellant in the circuit court shows that Eliza A. Quitman filed her certain petition on the law side of the court, in which she averred that she sold the Live Oak Plantation, on the 31st day of January, 1870, to Orlando P. Fisk, for the price and sum of $22,500, $4,500 of which was paid in cash, and that she received for the balance the nine notes of Fisk for $2,000 each, payable in nine several installments, to secure which a mortgage and vendor's lien was retained upon the plantation.

That the petition further set forth that George D.

Cragin, defendant in petition, had been decreed by this honorable court to be the real owner of the plantation, and prayed judgment against him for the sum of $12,000, less certain credits.

And the bill further avers that citation was issued on the petition, and served on the defendant April 3, 1879; that a default was entered against him April 23d, which was followed by a verdict and judgment against him as prayed,

The bill further avers that the circuit court was without jurisdiction to hear and determine the cause, as both the said Quitman and Cragin were at the time of the institution of the suit citizens of the State of New York, and have so remained ever since; that the said Quitman well knew this fact at the time she brought this suit, but that she falsely and fraudulently alleged in her petition that the said Cragin was a citizen of the State of Louisiana; and that, notwithstanding he made no appearance in the cause, nor assented to the jurisdiction of the court, she proceeded illegally and unjustly to obtain a judgment against him; that said judgment is *coram non judice* for want of jurisdiction in the court.

The bill was subsequently amended by adding an averment that the allegations in the petition, that complainant was decreed to be the owner of the Live Oak Plantation, were not true, and that he was not and is not indebted to the petitioner.

The complainant prayed that the judgment rendered against him be annulled, and that its collection be enjoined. Record, pp. 1 and 7.

The respondent filed a general demurrer to the bill. Record, pp. 8.

Appellant appeals from the decree sustaining the demurrer.

ASSIGNMENT OF ERRORS.

1. The circuit court erred in sustaining the demurrer, which confessed the truth of the allegations of the bill and the fraud charged.

2. The court erred in dismissing the bill on a demurrer, which confessed the fraud charged, and admitted the want of jurisdiction in the court which rendered the judgment complained of.

3. The demurrer should have been accompanied by an answer denying the fraud charged in the bill, and it was error, therefore, to sustain it.

ARGUMENT.

The appellee by her demurrer has admitted that both she and the appellant were citizens of the State of New York at the time she filed the petition and obtained judgment against Cragin. She has also confessed that she knew this fact, and that she fraudulently alleged to the contrary. She also confesses that the allegations of her petition, that Cragin was the real owner of the Live Oak Plantation, were false and untrue, and that Cragin was not indebted to her for any part of the judgment.

So that the case to be dealt with by this court is, whether a judgment confessedly obtained in a court without jurisdiction, by fraudulent practices, upon a fictitious and false claim, shall be permitted to stand in a court of equity.

That a bill will be maintained to set aside and open a judgment thus obtained cannot be disputed.

The defendant should have accompanied the demurrer by an answer denying the fraud charged, as required by equity rule No. 32.

A general demurrer to a plea setting up frand in obtaining a judgment is not sufficient, even though the particulars of the fraud are not set out in the bill, says this court in Christmas vs. Russell, 5 Wallace 291.

Any device practiced by one of the parties to a suit to give apparent jurisdiction to a circuit court of the United States, will, when discovered, deprive the offending party of the benefit of that jurisdiction.

Thus it has been frequently held by this court, that a suit will not be maintained, where the subject matter of a suit has been fictitiously transferred to a citizen ot another State for the purpose of enabling him to bring a suit in the circuit court, in a case where the real parties in intrest could not sue therein.

It would seem clear, on principle, that a court of equity will deprive the offending party of the fruits of his fraud.

We therefore submit that the decree of the circuit court should be reversed, for the reason, first, that the demurrer was not fortified by an answer denying the fraud charged; second, because it appears as a matter confessed that the appellee obtained the judgment complained of by falsely and fraudulently averring jurisdiction in the circuit court; and, third, because it appears that the debt for which judgment was obtained was not due.

Respectfully submitted,

J. D. ROUSE,

WM. GRANT,

Attorneys for Appellants.

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OFFICE SUPREME COURT U. S.
FILED
OCT 26 1883
WM. H. McKENNEY, Clerk.

Supreme Court of the United States.

October Term, 1883.

No. 93.

GEORGE D. CRAGIN, Appellant,

vs.

WILLIAM S. LOVELL, Executor of Eliza A. Quitman, Deceased.

Appeal from United States Circuit Court for the District of Louisiana.

Brief for Appellee.

STATEMENT OF THE CASE.

It must be borne in mind that the bill in this case charges that the defendant, in bringing her suit at law against the appellant, alleged in her pleadings that she was a citizen of New York, and that the appellant was a citizen of Louisiana; the bill then admits service of process upon the appellant, his utter neglect to answer, and the entering and confirming of a default against him, a verdict of a jury finding in our favor on all the allegations before them, and a judgment upon such verdict, and then an admission that there was no appeal from said judgment, and that it was final by reason of the expiration of the term at which it was rendered, (pp. 2, 3.)

This constitutes *res adjudicata* between the two parties, and it is too late for appellant to come into a court of equity to ask for relief on the allegations that our averments as to the citizenship of the parties were made falsely and fraudulently. The appellant had had his day in court in this issue, and it was found against him by a jury of his countrymen, and cannot now be reviewed under the Constitution and laws. Besides, his very averments show that he does not come into court with clean hands, and that it cannot and does not lie in his mouth to allege that our allegations were false and fraudulent; he admits service of process and default, and hence his neglect to obey the summons of the court to appear and answer our complaint, and he should have then and there set up his plea to the jurisdiction of the court; he cannot do that after the matter has been decided against him.

Suppose that he had appeared in a suit at law and filed a general denial, and judgment had gone against him, counsel would never contend that he could have afterwards enjoined on account of the false and fraudulent allegations of the plaintiff. But, it will be said, a general denial would have waived the special plea to the jurisdiction, which must be made *in limine;* well a judgment by default was equivalent, in Louisiana practice, to the entering of a general denial for the defendant, and by that practice we could not confirm the default and obtain judgment without proving to the jury all the allegations of our petition. The appellant forfeited all right to make the allegations of his present bill by neglecting to file his special plea *in limine*, and he had no excuse for not so doing, nor does he attempt to set up any. If he is a sufferer he suffers from his own laches, and a court of equity cannot relieve him.

Louisiana code of practice:

"Art. 310. If the defendant do not appear either in per-

" son or by his advocate after the delay provided by law,
" the plaintiff may take a judgment by default against him.

" Art. 311. Such judgment may be obtained by moving
" for it in court, but it consists merely in a statement on the
" records of the court, showing that the defendant has failed
" to appear.

" Art. 312. If two days after this first judgment has been
" rendered the defendant neither appears nor files his an-
" swer, definite judgment will then be given for the plaintiff,
" *provided he prove his demand. This proof is required in*
" *all cases.*

" Art. 313. When, from the nature of the demand dam-
" ages are to be assessed the court will direct a jury to be
" summoned to find the same *in the same manner as if the*
" *defendant had answered*, and the court will give their
" judgment in conformity with the verdict of the jury."

" It has been held for many years that if the defendant
" dispute the allegation of citizenship in the declaration he
" must plead the fact in abatement of the suit, and that this
" must be done in the order of pleading, as at common law."

Jones *vs.* League, 18 Howard, 81.

Wythe *vs.* Meyers, 3 Sawyer, 599.

The term at which the judgment had been rendered having expired before the filing of appellant's bill, the Court was powerless to reopen the judgment, and had lost control of it.

Bank U. S. *vs.* Moss, 6 Howard, 37.

Crabtree *vs.* Neff, 1st Bond, 554.

" No fact once tried by a jury shall be otherwise re-ex-
" amined in any court of the United States than according

" to the rules of the common law." Cons. U. S., 7th amend.

Parsons *vs.* Bedford, 3 Peters, 433.
Crim *vs.* Handley, 94 U. S., 657.

" It is not competent for this Court now to presume that " neither of these kinds of evidence was offered besides the " notes. The inference, on the contrary, is the other way."

Bank U. S. *vs.* Moss, 6 Howard, 37.

Complainant has been at fault, and thus lost all remedy.

" Courts of equity may exercise jurisdiction to enjoin a " judgment or to grant the injured party a new trial in a " case where the proof is clear, * * * * or if it ap- " pears that the defence could be made at law, but that he " was prevented from making it by fraud or unavoidable ac- " cident, *unmixed with any fault or negligence* in himself " or his agents."

Crim *vs.* Handley, 94 U. S., 657.

Truly *vs.* Wanzer, 5 How., 142.
2 Story's Eq., (9th ed.,) sec. 887.
R.R. Comp'y *vs.* Neal, 1 Woods, 253.
Searles *vs.* R.R. Co., 2 Woods, 621, 626.

" But such relief is never given upon any ground of which " the complainant, with proper care and diligence, could " have availed himself in the proceeding at law. In all such " cases he must be without fault or negligence. If he be " not within this category the power invoked will refuse to " interfere, and will leave the parties where it finds them. " Laches, as well as positive fault, is a bar to such relief."

Brown *vs.* Buena Vista, 95 U. S., 159.

In equity even judgments obtained by fraud are most reluctantly reversed, as leading to litigation *ad infinitum.*

See Opinion of James, L. J., in Flower *vs.* Lloyd, 9 Ch., Div., 335.

In Louisiana a plea to the jurisdiction, *rutionæ personæ*, must be made *in limine*.

Phipps *vs.* Snodgrass, 31 La. Ann., 88.
Marqueze *vs.* Le Blanc, 29 La. Ann., 195.
Goodrich *vs.* Hunton, 31 La. Ann., 582.

"If anything is settled in our jurisprudence it is that one "cannot be heard by way of action in nullity to destroy a "judgment for matters known and in existence at the time "of the institution of the suit in which the judgment was "rendered, even though, by some neglect, they may not "have been pleaded."

Succession of Lebreu, 31 La. Ann., 214.
Perry *vs.* Rue, 31 La. Ann., 287.

We think that our opponent claims too much in insisting that we have not complied with the 32d equity rule, by supplementing our demurrer with a denial of the fraud charged; that rule, we submit, does not require a demurrer to be so supplemented, but only that a plea should be. Judge Story held: "The office of a demurrer to a bill in "equity is to bring before the court the right to maintain "a bill, admitting all its allegations to be true, and the "court will not, therefore, examine *aliunde* what facts might "or might not defeat it, for this is the office of an answer "or plea." (Ocean Ins. Co. *vs.* Fields, 2 Story, 59.)

But if we are in error as to this then the defect cannot justify the court or the appellant in treating the demurrer as a nullity. "The proper mode of taking advantage of a "formal defect of this description is by an application for "an order setting aside the pleading, or to take it off the

" files for irregularity." (Ewing *vs.* Blight, 3 Wallace, Jr., 134,) quoting:

Wall *vs.* Stubbs, 2 Vesey *vs.* Beames, 385.
Heart *vs.* Corning, 3 Paige, 570.

It seems to us that it would be useless to require a party to deny an allegation of fraud that he clearly shows the applicant was *estopped* from setting up.

It appearing that the appeal in this case has been merely sued out for delay, and has delayed the proceedings on the judgment of the inferior court, (see Record, pp. 10, 11, 12,) we pray that our judgment be affirmed, with ten per cent. of the amount thereof in addition as damages for a frivolous appeal according to section 2 and 3 of rule 23 of the General Rules of this Court.

All of which is respectfully submitted.

JOSEPH P. HORNOR,
W. S. BENEDICT,
Of Counsel.

WASHINGTON, D. C., 25 *October*, 1883.